No. 94

Motion

Filed Oct. 15, 1904

United States Circuit Court of Appeals

FIFTH CIRCUIT.

No. 798.

THE HUGULEY MANUFACTURING COMPANY ET AL., APPELLANTS,

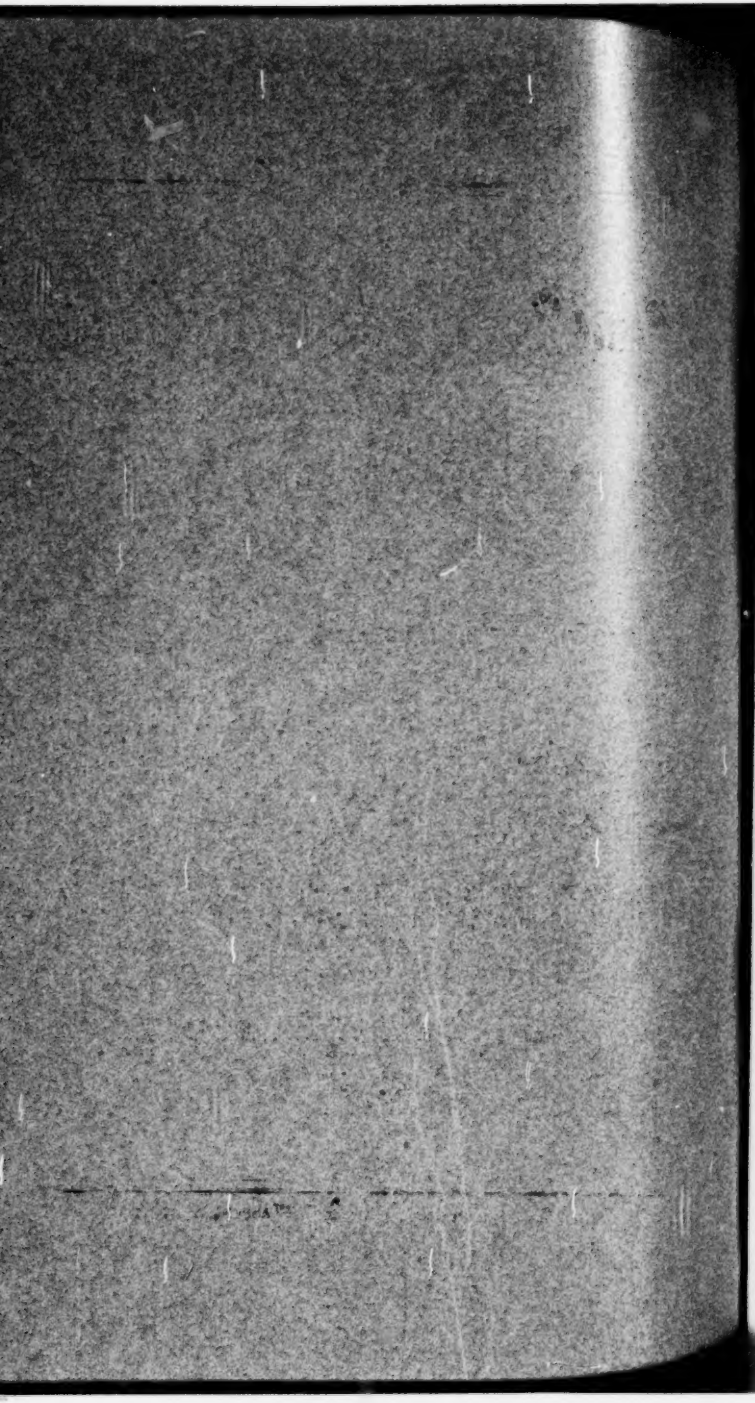
vs.

THE GALETON COTTON MILLS ET AL., APPELLEES.

FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

MOTION TO PAY FOR PRINTING RECORD OUT OF FUND IN COURT.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 868



ED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.

HUGULEY MFG. CO. ET AL., *Appellants*,
vs.
THE GALETON COTTON MILLS, *Appellees*.

appellant in the above-stated cause comes and moves
rt to direct the costs of printing the record in the
ntitled cause, including the clerk's fee for supervising
ne, out of the fund in the registry of the court below,
vn by the record in said cause on file in this court,
ne being the fund in controversy, except the sum of
ndred dollars, which movant expects to be able to
the following grounds, to wit:

Because movant is insolvent and unable to pay the
except as to said $400.00).

Because movant has exhausted every effort to ob-
ney to pay for copying and printing the record, and
y been able to obtain the sum of twelve hundred dol-
ght hundred of which has been expended in having
ord copied and certified to this court, all which is
by the affidavit of W. T. Huguley, herewith filed.

Movant submits as an additional reason why this
should be allowed that through its counsel it has
ed every effort to obtain the consent of counsel for
e to abbreviate the record as sent to this court, and
in a written stipulation to omit certain portions
from the printed record, but without success, all of
s shown by the affidavit of W. R. Hammond, hereto
d.

21, 1899.

Signed)

W. R. HAMMOND,
J. M. CHILTON,
Sol's for Appellants.

—A

UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH JUDICIAL CIRCUIT.

STATE OF GEORGIA, }
Fulton County. }

THE HUGULEY MANUFACTURING COMPANY, *Appellant,* }
vs.
THE GALETON COTTON MILLS, *Appellee.* }

In person came before the undersigned W. R. Hammond, who, after being duly sworn, deposes and says that he is of counsel for the appellant in the above-stated cause. On the 8th day of November, 1898, deponent called on Mr. B. F. Abbott, of counsel for appellee in said cause, and asked him to consent to an abbreviation of the record and the evidence on appeal to the circuit court of appeals. Deponent found, after a brief conversation with Mr. Abbott, that he was indisposed to make any consent or to allow deponent to do anything to which he would give his attention with a view to abbreviating the evidence.

A few days previous thereto deponent had called on Mr. P. H. Brewster and asked him to enter into an agreement in reference to an abbreviation of the record and the evidence on the appeal, and Mr. Brewster told deponent that he did not have time to consider the matter and declined to go into any negotiations with deponent on the subject whatever. Deponent asked him what he must do, and he referred deponent to Mr. Abbott, his associate, stating that he would abide by any agreement that might be made between his said associate and deponent.

Deponent then, on November 8th, 1898, addressed a letter to Mr. B. F. Abbott, of counsel for appellee, a true copy of which is attached hereto. To this letter deponent received no reply, except a verbal statement from Mr. Abbott that he could not undertake the labor necessary to an abridge-

ment of the record. Deponent afterwards, on December 17th, 1898, addressed a letter to Mr. B. F. Abbott in reference to an abridgement of the record, a true copy of which is hereto attached.

This letter was received by Mr. Abbott, who told deponent verbally subsequently thereto that he had received the same, but that he could not make any consent to the abbreviation suggested. The agreement handed to Mr. Abbott, as stated therein, was not returned to deponent by him. Deponent further says that he made a special request of Mr. Abbott, counsel for appellant, prior to the making up of said record by the clerk, to agree to the omission of all the evidence in the case referring to the physical condition of the property in consideration of the grounds proposed, that no exception should be made to the ruling and decree of the court in refusing the claim of appellant on account of the physical condition of the property. This embraced a large part of the proofs in the cause, and would have been a very material reduction. Deponent proposed to Mr. Abbott to have the record prepared with this part eliminated and submitted to him for his examination, but Mr. Abbott said that this would be too much labor, and that he could not undertake it. Deponent has made every effort in his power to obtain a consent from counsel for appellee in reference to the abbreviation of the record, and has never been able to get them or either of them to agree to any method by which the same might be accomplished.

Deponent attaches hereto a true copy of the agreement handed to Mr. Abbott, accompanying the letter above referred to of December 17, 1898.

Deponent further says that after said record was made up and returned to the court of appeals, to wit, on the 1st day of February, 1899, he addressed a letter to Messrs. B. F. Abbott and P. H. Brewster for the purpose of obtaining from them a stipulation as to the printed record in said cause. A copy of said letter is hereto attached and a copy of the

proposed agreement which accompanied the same. Said agreement was returned to deponent by counsel for appellee without their signature and with a written memorandum thereon signed by them, which is hereto attached.

Deponent is of the opinion that said record could have been materially abbreviated, and fully one-half the cost of copying the same, as well as the cost of printing, could have been saved if deponent could have obtained the co-operation and consent of counsel for appellee in said cause. He is of the opinion that the propositions made by him to counsel for appellee were all reasonable, and might have been complied with without any injury to appellee's side of said cause.

W. R. Hammond.

Sworn to and subscribed before me this the 6th day of February, 1899.

S. D. Harris, [seal.]
N. P., Fulton County, Georgia.

Hammond, Skee (obliterated) Langley, Atlanta, Ga.

November 8, 1898.

Hon. B. F. Abbott, *City.*

Dear Sir: A few days ago I called on Mr. P. H. Brewster, associate counsel with you in the case of "The Huguley Mfg. Co. *vs.* The Galeton Cotton Mills," and asked him to consent to an abbreviation of the record and the evidence on the appeal to the circuit court of appeals. He told me that he did not have time to consider the matter and declined to go into any negotiations on the subject whatever. I asked him what I must do, and he referred me to you, stating that he would abide by any agreement that you and I might make. Feeling confident that I might be able to obtain your co-operation, I called on you today. I found, however, after a brief conversation with you, that you were indisposed to make any consent or to allow me to do any-

thing to which you would give your attention with the view of abbreviating the evidence.

I beg to call your attention to the following language of the circuit court of appeals in the case of "Nashua & Lowell R. Corp. *vs.* Boston & Lowell R. Corp.," in 61st Fed. Rep., p. 245:

"Considering the duty which solicitors and attorneys practicing in the Federal tribunal owe to the courts and to each other, it is to be expected that ordinarily the clerk will receive joint directions with reference to facilitating and simplifying the transcript on appeal."

As I understand you, in our interview today you were unwilling to consent to any abbreviation whatever of the transcript in this case. I desire again to make the request of you that you consent to take up the matter with me of abbreviating the transcript of the record. The evidence is very voluminous, covering nearly 1,700 pages of typewritten matter, the same being the stenographer's report. This report contains a great deal that is not evidence, as, for instance, the statements of the stenographer that the court met on certain days and giving the names of counsel for plaintiff and defendant that were present; also objections made by counsel to evidence, giving in many places the remarks of counsel, and giving also the language of the master in sustaining or overruling the objections. There is also a great deal of the stenographer's report that is not evidence proper. For instance, a question would be asked and objected to, and the master would sustain the objection. Such matter as this ought to be eliminated from the record by consent of counsel.

We have a number of sets of interrogatories that were asked witnesses, as expected, in which the questions propounded to different witnesses are identical. We desire a stipulation from you that these questions need not be copied but once in the record. The answers of the witnesses can be made just as intelligible by copying the questions once as by copying them a dozen times. In the testimony as re-

ported by the stenographer there are a great many repetitions. Sometimes questions are asked and answered in almost identically the same language twice. There ought to be some way in which we might agree that mere repetitions, either in questions or answers, might be omitted.

I am willing on my part to do the labor necessary to curtail this record, and request that you give me such co-operation as your duty to the court, to say nothing of your duty to opposing counsel, would prompt. It seems to be the opinion of the court of appeals that it is the duty of counsel on both sides of the cause to aid the court in the abbreviation of records as much as possible. I am willing to undertake the labor of boiling this evidence down and stating the substance of it in much briefer form than it is stated in the stenographer's report if you will join me in good faith and examine this work after I have done it with the view to giving it your consent if it shall be properly done.

I make this request of you for the purpose of conforming to the views of the court of appeals as expressed by them in a number of cases reported, where they indicate in strong terms that they think counsel on both sides of the cause should co-operate for the purpose of abbreviating the record.

As I understand you today, you were utterly unwilling to undertake the labor of making an examination of the abbreviated statement of the record, and were unwilling to consent that anything might be eliminated so as to make the record short and compendious, as it should be before the court of appeals.

Hoping to hear from you favorably in this regard, and that you will be willing to co-operate with me in endeavoring to accomplish this result, I am,

Yours truly,

(Signed) W. R. Hammond.

FEBRUARY 1, 1899.

Messrs. B. F. ABBOTT and P. H. BREWSTER, *City.*

GENTLEMEN: Enclosed I hand you a written stipulation as to the omission of certain parts of the record in the case of The Huguley Mfg. Co. *vs.* The Galeton Cotton Mills, appellee in the U. S. circuit court of appeals for the fifth circuit, from the printed record. Of course, our object is to get rid of the expense of printing these portions of the record which have been made up and already transmitted by the clerk. I respectfully request your attention to this matter and an early reply. If you cannot consent to the omission of all of these items from the printed record, please be kind enough to return the paper to me, indicating what portions you are willing to consent to omit. If you decline to consent to the omission of any of these papers, please return this paper to me with your refusal endorsed on the same in writing. I will thank you very much to sign the consent. I would add that all of these books and papers have been very carefully prepared in the neatest and most intelligible manner by Mr. Brown, and that none of us will find any difficulty in readily and fully understanding all of his figures.

Awaiting your early reply, I beg to remain,

Yours most truly,

W. R. HAMMOND,
Of Counsel for Appellant.

U. S. CIRCUIT COURT OF APPEALS, FIFTH JUDICIAL CIRCUIT.

THE HUGULEY MANUFACTURING COMPANY, *Appellant*,
vs.
THE GALETON MILLS, *Appellee*.

It is hereby stipulated and agreed between counsel for appellant and appellee in the above-stated case that the following portions of the record in said cause be not printed, to wit:

1. Forty-three monthly and quarterly reports, from December, 1892, to December, 1895, of the superintendent of the Galeton Cotton Mills.
2. One hundred and sixty-six pages of account sales of N. Boynton & Company.
3. The inventory made by Higgenbotham & Brown.
4. The journal of the Galeton Cotton Mills.
5. The ledger of the Galeton Cotton Mills.
6. The cotton books of the Galeton Cotton Mills.
7. The cotton books of Atkinson & Turner.
8. The cotton books of J. T. Zachry.

Each party to this agreement reserves the right to make such reference to any of said portions of the record, and to use the same, and to quote from the same in briefs and arguments as they may deem proper, just as if the same had been printed.

This February —, 1899.

J. M. CHILTON,
W. R. HAMMOND,
Attorneys for Appellants.

——— ———,
Attorneys for Appellee.

As we understand the law, the appeal will be heard and determined on the record, and we do not understand that

anything will be a part of the record in the court of appeals except such as is copied and certified by the clerk as such. The documentary evidence mentioned in the foregoing stipulation is in large part the documentary evidence offered by Galeton Cotton Mills and Robinson, trustee, in support of their defense. This being so, of course we decline to consent to the above stipulation.

This 2nd Feb., 1899.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Counsel for Galeton Cotton Mills.

Counsel for appellee cannot agree to the above and foregoing prepared stipulation. The defense set up before the master consisted in large part of the evidence contained in the books and papers mentioned above. We are clearly of opinion that it should be printed in order that the court of appeals may have it in convenient form and in compliance with the rules, as we understand it.

Feb. 6, 1899.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Att'ys for Appellee.

DEC. 17, 1901.*

Hon. B. F. ABBOTT, *City.*

DEAR SIR: Enclosed I hand you agreement in reference to copying of the cotton books of the Galeton Cotton Mills and of Atkinson & Turner, which I request you to sign and return to me. This will abbreviate the record very much, and I hope you can see your way clear to complying with our request in this regard. I have just examined these books, and they show the purchase of a large number of bales on many different days, the weight of each bale being given separately. I think you will agree with me that it is unnec-

* NOTE.—The date of the foregoing letter is evidently incorrect.

essary to set down the weight of these separate bales, and that it will only be necessary to give the aggregate number of pounds for each day. The books also show the aggregate amount of money paid for each day, and this, of course, will show the price per pound.

Awaiting your reply, I beg to remain,

Yours truly,

W. R. HAMMOND.

UNITED STATES CIRCUIT COURT OF APPEALS.

J. J. ROBINSON, *Trustee*,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

It is agreed between counsel for appellant and appellee that the clerk of the United States circuit court, in copying the books of the Galeton Cotton Mills and in copying the cotton books of Atkinson & Turner, introduced in evidence in the above-stated cause, may make a statement of the aggregate number of pounds of cotton purchased each day and the aggregate price paid for the same, as shown by said books on each day, omitting the separate weights of each bale and the names of the parties from whom they were bought, and also the marks and numbers of the bales.

——— ———,
Counsel for Appellants.

——— ———,
Counsel for Appellee.

U. S. CIRCUIT COURT OF APPEALS, FIFTH JUDICIAL CIRCUIT.

THE HUGULEY MFG. CO., *Appellant*,
vs.
GALETON COTTON MILLS, *Appellee*.

STATE OF LOUISIANA,
Parish ——.

In person comes before the undersigned W. T. Huguley, who, after being duly sworn, deposes and says:

That he has been personally conducting the litigation in the above-stated case for the Huguley Mfg. Co. ever since its first beginning. He holds authority from D. Jannappoulo, the president of the company, to do so, and it is through the efforts of deponent alone that the litigation has thus far been carried on.

Deponent is the largest stockholder in the Huguley Mfg. Co. and more interested than any one else.

Deponent says that he has drawn upon his own private means to conduct the litigation in the above-stated case until he has exhausted them. He has used every effort and every means in his power to procure money for the purpose of paying the expenses of copying and certifying the record and of printing the same in the above case, and he has no means whatever of paying for the printing of the record in this court. Deponent has made his calculations to be able to get the record to this court and have the same printed out of the funds that he expected to be able to control, but he was calculating on obtaining a consent from the counsel on the other side to abbreviate the record, which consent he failed to obtain. It has practically exhausted his resources to have the long record copied and certified to this court. Deponent expects to be able to get $400.00 more, besides what has been already obtained by him, which can be used for

the printing of the record as far as it will go. He states positively that this is absolutely all the money that he will be able to procure for that purpose.

This money has not yet been paid, but he has the promise of it and hopes to be able to get it. Deponent further says that the Huguley Mfg. Co. is absolutely insolvent and has long since been out of business and has no means whatever with which to pay any costs or expenses, except such money as it may be able to recover in the present case. Said Huguley Mfg. Co. has become insolvent by reason of the result of this foreclosure proceeding.

(Signed) WM. T. HUGULEY.

Sworn to and subscribed before me Feb. 21, 1899.

—— ——.

Endorsed: Filed Feb. 21, 1899. Motion to pay for part of printing record out of fund in court, with exhibits. J. M. McKee, clerk.

CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

HUGULEY MFG. CO. ET AL. *vs.* J. J. ROBINSON. } No. 798.

And now comes appellee and suggests that the transcript of the record in the above-stated cause is incomplete in this:

The clerk of circuit court below has failed to send up certified copy of the order of the court which shows on the face that it was passed by consent, providing for the payment out of the proceeds of the mortgaged property in the registry of the court the amount of the judgment in favor of the Huguley Manufacturing Company against Galeton Cotton Mills for 2,500 dollars principal, besides interest, less certain taxed costs against that special finding, and which order also provided for the payment of 3,500 dollars to Dorsey, Brewster &

Howell and 3,500 dollars to B. F. Abbott, as solicitor for the plaintiffs below, in pursuance of decree previously rendered.

Wherefore appellee moves for order directing the clerk of the circuit court for the northern district of Georgia to certify and send up copy of said order.

P. H. Brewster,
B. F. Abbott,
Att'ys for Appellees.

Appeared B. F. Abbott, one of the attorneys for appellee, and made oath that the statements contained in the foregoing motion are true.

B. F. Abbott.

Sworn and subscribed to before me April 18, 1899.

——— ———.

We consent that the above order may be considered a part of the record.

April 18, 1899.

J. M. Chilton,
W. R. Hammond,
Counsel for Appellant.

It is also agreed that the Galeton Cotton Mills filed a petition to apply the rents and profits which were awarded by the master to the deficiency of the mortgaged debt, the same being the petition referred to in the decree of Feb. 28, 1898, as filed that day. It is further agreed that the clerk of said circuit court shall certify a copy of said petition and also said consent decree first above mentioned to this court as upon certiorari, which is waived.

April 18, 1899.

Hammond & Chilton,
Sol'rs Appellants.
P. H. Brewster,
B. F. Abbott,
Att'ys for Appellees.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

I, J. Martin McKee, acting clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing twelve pages contain a true, full, and perfect transcript of the papers filed in this court of date Feb. 21, 1899, entitled "Motion by appellant to pay for part of printing record out of fund in court, with exhibits," and "Motion suggesting diminution of the record by appellees and agreement to correct record," filed April 18, 1899, same being filed in case of Huguley Manufacturing Company *et al. vs.* Galeton Cotton Mills *et al.*, No. 798, as fully and completely as the same now remain of record and on file in this office.

In testimony whereof I hereunto subscribe my name and affix the seal of said U. S. circuit court of appeals, at the city of New Orleans, this the 24th day of September, A. D. 1901.

(Seal United States Circuit Court of Appeals, Fifth Circuit.)

J. MARTIN MCKEE,
Acting Clerk United States Circuit Court of Appeals, Fifth Circuit.